Supreme Court, U.S.
FILED
FEB 22 1993
OFFICE OF THE CLERK

No. 92-641

In The

Supreme Court of the United States

October Term, 1992

LEONARD NOBELMAN AND HARRIET NOBELMAN,

Petitioners,

v.

AMERICAN SAVINGS BANK,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF MORTGAGE BANKERS ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

ROGER M. WHELAN
VINCENT J. COLATRIANO
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Of Counsel

WILLIAM E. CUMBERLAND
General Counsel
MORTGAGE BANKERS ASSOCIATION OF AMERICA
1125 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 861-6516

Counsel of Record for *Amicus Curiae* Mortgage Bankers Association of America

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST 1

STATEMENT OF ISSUES ADDRESSED BY *AMICUS CURIAE* 2

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. IN CONSTRUING BANKRUPTCY CODE SECTION 1322(b)(2), THIS COURT SHOULD CONSIDER THE MEANING AND INTENT OF CONGRESSIONAL POLICY 4

II. THE SECTION 1322(b)(2) PROHIBITION AGAINST THE MODIFICATION OF THE RIGHTS OF A CREDITOR HOLDING A CLAIM SECURED ONLY BY A MORTGAGE ON THE CHAPTER 13 DEBTOR'S PRINCIPAL RESIDENCE PROMOTES CONGRESS' POLICY OF FOSTERING AFFORDABLE HOME FINANCING 10

A. The Section 1322(b)(2) Prohibition Against Modifying Home Mortgages is Consistent with Congress' Support for Home Mortgages via Mortgage Guarantees 10

B. Section 1322(b)(2)'s Prohibition Against Modifying Home Mortgages is Consistent with Congress' Support for Home Mortgages via the Secondary Mortgage Market 13

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 733 (1975) 5

Dewsnup v. Timm, 112 S. Ct. 773 (1992) 6, 7, 8

Grubbs v. Houston First American Sav. Ass'n, 730 F.2d 236 (5th Cir. 1984) 6

In re Bellamy, 962 F.2d 176 (2d Cir. 1992) 6

In re Hougland, 886 F.2d 1182 (9th Cir. 1989) 6

In re Nobelman, 968 F.2d 483 (5th Cir. 1982) 4, 5

In re Taddeo, 685 F.2d 24 (2d Cir. 1982) 9

Landmark Fin. Serv. v. Hall, 918 F.2d 1150 (4th Cir. 1990) 9

United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 109 S. Ct. 1026 (1989) 5

STATUTES

11 U.S.C. § 506(a) 3, 6

11 U.S.C. § 506(d) 6

11 U.S.C. § 1322(b)(2) ..... *passim*

11 U.S.C. § 1322(b)(5) 8, 9

12 U.S.C. § 1721(g)(1) 13

15 U.S.C. § 78c(a)(41) 14

Emergency Home Finance Act of 1970, Pub. L. No. 91-351, 84 Stat. 450 (1970) 14

Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476 (1968) 13

TABLE OF AUTHORITIES – Continued

Page

I.R.C. § 860G(a)(3)(A) 15

National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934) 10

Secondary Mortgage Markets Enhancement Act of 1984, Pub. L. No. 98-440, 98 Stat. 1689 (1984) 14

Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) 15

OTHER AUTHORITIES

H.R. 8200, 95th Cong., 1st Sess. § 1322(b)(2) 5

5 Lawrence P. King, *Collier on Bankruptcy* ¶ 1322.09[1] (15th ed. 1992) 9

S. 2266, 95th Cong., 1st Sess. § 1322(b)(2) 5

Testimony of Hon. Frank Keating, U.S. Department of Housing and Urban Development, June 6, 1991 12

VA Office of General Counsel Precedent 1-91, 56 Fed. Reg. 25,156 (June 3, 1991) 12

No. 92-641

In The

Supreme Court of the United States

October Term, 1992

LEONARD NOBELMAN AND HARRIET NOBELMAN,

Petitioners,

v.

AMERICAN SAVINGS BANK,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF OF MORTGAGE BANKERS ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

STATEMENT OF INTEREST

Mortgage Bankers Association of America ("MBAA") files this brief *amicus curiae* in support of respondent American Savings Bank with the consent of the parties. Copies of the letters of the parties indicating consent to the filing of this brief are being filed with this brief.

MBAA is a national trade association representing mortgage banking companies, financial institutions, and other entities participating in the home mortgage market. MBAA represents the interests of its 2400 participating

members through its research functions and through involvement in legislative and judicial proceedings. MBAA filed a brief *amicus curiae* in support of respondent with the United States Court of Appeals for the Fifth Circuit.

The matter at issue in the case at bar will have a significant impact upon MBAA because the modification of home mortgages as advanced by petitioners would have serious adverse effects on the home mortgages, mortgage markets, and mortgage credit markets in which *amicus'* member institutions are involved. Under petitioners' interpretation of Bankruptcy Code section 1322(b)(2), *amicus'* member institutions will be unable to realize the full value of their loans, and may be compelled to curtail investing in home mortgages or mortgage-backed securities because of anticipated losses.

STATEMENT OF ISSUES ADDRESSED BY *AMICUS CURIAE*

Does Bankruptcy Code section 1322(b)(2), 11 U.S.C. § 1322(b)(2) (1988), prohibit a Chapter 13 debtor from modifying the rights of a creditor holding a claim secured only by a mortgage on the debtor's principal residence?

STATEMENT OF THE CASE

Amicus adopts respondent's Statement of the Case. Petitioners are Chapter 13 debtors in this bankruptcy case. Respondent holds the mortgage secured by petitioners' primary residence. Because the value of the residence has decreased, petitioners have attempted to modify respondent's rights by bifurcating the amount owing on their home mortgage into secured and unsecured portions, so as to repay the secured portion outside of the proposed plan, and to discharge the balance with unsecured debts under the proposed plan. The Court of Appeals for the Fifth Circuit affirmed the denial of petitioners' proposed reorganization plan.

SUMMARY OF ARGUMENT

Amicus will not repeat the detailed discussion of the language, structure, and history underlying Bankruptcy Code section 1322(b)(2) so ably set forth in Respondent's Brief and the Brief for *Amici Curiae* Federal Home Loan Mortgage Corporation and Residential Funding Corporation ("FHLMC Brief"). As demonstrated in those briefs, Bankruptcy Code section 1322(b)(2) expressly prohibits a Chapter 13 debtor from modifying the rights of a creditor holding a claim secured only by a mortgage on the debtor's principal residence. Furthermore, as the court below properly decided, section 506(a) of the Code does not alter the operation of section 1322(b)(2) to permit a Chapter 13 debtor to "cram down" a residential mortgage creditor's secured claim to the value of the property,

since such a cram down would allow the debtor to modify the creditor's rights, the very result forbidden by section 1322(b)(2). Allowing bifurcation and cram down would quite simply, as recognized by the court below, "vitiate the protection of section 1322(b)(2)." *In re Nobelman*, 968 F.2d 483, 489 (5th Cir. 1992). Moreover, if there is any doubt about the plain meaning of section 1322(b)(2), the Court should interpret the provision to recognize the congressional purpose of fostering affordable home financing and insulating home mortgages from Chapter 13 modification. To permit Chapter 13 modification of claims secured by home mortgages would be contrary to the congressionally-fostered system for providing secure, affordable, and easily attainable home loans for Americans.

ARGUMENT

I. IN CONSTRUING BANKRUPTCY CODE SECTION 1322(b)(2), THIS COURT SHOULD CONSIDER THE MEANING AND INTENT OF CONGRESSIONAL POLICY.

For all the reasons stated in Respondent's Brief and the FHLMC Brief, *amicus* believes that the plain meaning of Bankruptcy Code section 1322(b)(2) forbids Chapter 13 debtors from modifying the rights of creditors secured by a mortgage on the debtor's principal residence. Moreover, even assuming the statute's plain language did not definitely resolve the issue, the decision of the court below is the only result that can be squared with the intent and policy of Congress. It is well settled that the

Court may and should take account of Congress' purposes and interest when interpreting ambiguous statutes. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 737 (1975) (when contours of statute may not be divined from statute's text, it is proper to consider legislative policy considerations); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 109 S. Ct. 1026, 1031 (1989) (permissible to consider drafter's intentions and "important state and federal interest[s]" when meaning is inconclusive).

In Bankruptcy Code section 1322(b)(2), Congress obviously meant to offer home mortgage lenders protection from Chapter 13 debtors' modification of home mortgages. Congress' overwhelming policy to foster affordable and easily available home mortgages compels the interpretation of section 1322(b)(2) that protects the entire amount of home mortgage loans.

That section 1322(b)(2) does not permit cram downs is apparent not only from its text, but also from its legislative history. As discussed in more detail in Respondent's Brief and the FHLMC Brief, under pre-Bankruptcy Code practice, and specifically under Chapter XIII of the Bankruptcy Act of 1898, an individual's plan could not modify the rights of any creditor holding a claim secured by real property. Section 1322(b)(2) represents a compromise between the House of Representatives, which originally proposed to allow the modification of any secured claims, H.R. 8200, 95th Cong., 1st Sess. § 1322(b)(2) (1977), and the Senate, which proposed to preserve the Chapter XIII protection to all creditors holding claims secured by real property. S. 2266, 95th Cong., 1st Sess. § 1322(b)(2) (1977). *See In re Nobleman*, 968 F.2d at 488-89;

Grubbs v. Houston First American Sav. Ass'n, 730 F.2d 236, 246 (5th Cir. 1984) (*en banc*). In striking this compromise, Congress was motivated by its desire to preserve the availability of residential mortgage lending for individuals who could not otherwise afford to buy a home,[1] and by its concern, as expressed by witnesses during legislative hearings, that allowing modification of the rights of residential mortgage lenders could dry up the residential mortgage market. *Id.* Cram downs are precisely the kind of modifications that would have such an adverse effect, and they are thus precisely the kind of modifications that section 1322(b)(2) was designed to prevent.

This analysis tracks that of the Court's decision last Term in *Dewsnup v. Timm*, 112 S. Ct. 773 (1992). In deciding that a debtor could not use section 506(d) of the Bankruptcy Code, in conjunction with section 506(a), to "strip down" a creditor's lien on real property to the value of the collateral,[2] the Court relied in large part on

---

[1] Even those courts that have allowed cram downs have acknowledged the congressional purpose of protecting residential real estate lenders. *See, e.g., In re Bellamy*, 962 F.2d 176, 181-82 (2d Cir. 1992); *In re Hougland*, 886 F.2d 1182, 1185 (9th Cir. 1989).

[2] In *Dewsnup*, the Court rejected a debtor's argument that section 506(d) of the Code allows the debtor to void any lien to the extent it exceeds the value of the property securing the debt. The Court refused to resolve the ambiguous text of section 506(d) by giving the words "allowed secured claim" in that section the same meaning those words have in section 506(a), in part because such a construction would depart from pre-Code law and in part because such a construction would give the debtor an unbargained-for windfall in the event that the property subsequently appreciated in value. *Id.* at 778. The same

the fact that pre-Code bankruptcy law did not allow such a practice and there was "nothing in the Code's legislative history that reflects any intent to alter that law." *Id.* at 777. As the Court put it,

> [T]o attribute to Congress the intention to grant a debtor the broad new remedy against the allowed claims to the extent that they become "unsecured" for purposes of § 506(a) without the new remedy's being mentioned somewhere in the Code itself or in the annals of Congress is not plausible, in our view, and is contrary to basic bankruptcy principles.

Id. at 779.

The Court's reasoning in *Dewsnup* is fully applicable here. As discussed, it is undisputed that under pre-Code bankruptcy law, a Chapter XIII debtor could not alter or in any way (including through a cram down) modify a claim that was secured by the debtor's real property. Although in enacting the Code Congress allowed modification in situations other than claims secured by the debtor's principal residence, there is no indication in the Code's legislative history that, with respect to claims secured by the debtor's principal residence, Congress intended to do anything other than to preserve the pre-Code protection against modification in all of its forms.

---

analysis applies fully here, as the cram down relief sought by petitioners clearly departs from pre-Code law and would give petitioners the same windfall discussed in *Dewsnup*. Furthermore, respondent's case is even stronger here than was the creditor's in *Dewsnup* because section 1322(b)(2) contains an *explicit* prohibition against modification.

Indeed, the legislative history demonstrates that Congress specifically intended to protect the rights of residential mortgage lenders. Thus, when "Congress amends the bankruptcy laws, it does not write 'on a clean slate,' " *Dewsnup*, 112 S. Ct. at 779 (citation omitted), and because there is no indication in the Code's legislative history that Congress intended to permit cram downs, this Court should not attribute to Congress the intent to grant petitioners the "broad new remedy" they assert. *Id.*

Finally, if the Court focuses, as it must, on the structure of section 1322 as a whole, it should conclude that the Fifth Circuit's decision was correct. The interrelationship among section 1322(b)'s provisions, and particularly, the interrelationship between sections 1322(b)(2) and 1322(b)(5), demonstrate an inherent weakness in petitioners' proffered construction. Section 1322(b)(5) allows the debtor, when the repayment period under the original lender-borrower agreement is longer than the three to five year term of the debtor's plan, to cure any prior default and pay arrearages on any secured or unsecured claim over a reasonable time.[3] By far the most common type of individual debt which has a term longer than

[3] Section 1322(b)(5) provides that a plan may

> notwithstanding paragraph (2) of this subsection [section 1322(b)(2)], provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due.

three to five years is the home mortgage.[4] Thus, section 1322(b)(5) provides a significant remedy to debtors that is not limited by section 1322(b)(2)'s prohibition on modification. However, the relief provided by section 1322(b)(5) – the ability to pay arrearages over time – does not extend to allow the debtor to miss or restructure current or future payments under the original loan agreement.[5] By granting this limited relief to debtors, Congress sought to protect debtors against the loss of their homes because of non-payment of arrearages while at the same time protecting the residential mortgage industry (with the ultimate goal of facilitating home ownership) by protecting against any further modification of the creditor's rights. To allow cram downs upsets this delicate but limited remedy specifically enacted by Congress and tramples on congressional intent.

[4] *See* 5 Lawrence P. King, *Collier on Bankruptcy* ¶ 1322.09[1] (15th ed. 1992) ("Although section 1322(b)(5) is not limited to secured or residential loans, its most common use by far is to cure defaults on residential mortgages.").

[5] Moreover, the ability of the debtor to cure a default and pay arrearages over a reasonable period of time under section 1322(b)(5) is not, in any way, deemed a modification of the secured claim within the meaning of section 1322(b)(2). *See, e.g., In re Taddeo*, 685 F.2d 24 (2d Cir. 1982); *Landmark Fin. Serv. v. Hall*, 918 F.2d 1150 (4th Cir. 1990).

II. THE SECTION 1322(b)(2) PROHIBITION AGAINST THE MODIFICATION OF THE RIGHTS OF A CREDITOR HOLDING A CLAIM SECURED ONLY BY A MORTGAGE ON THE CHAPTER 13 DEBTOR'S PRINCIPAL RESIDENCE PROMOTES CONGRESS' POLICY OF FOSTERING AFFORDABLE HOME FINANCING.

A steady procession of congressional enactments demonstrates Congress' policy to encourage capital investment in home ownership in order to provide affordable home financing for Americans. Congress has sought to implement this goal in two main ways: (1) by providing for mortgages guaranteed by the government, and (2) by fostering a vital, effective, and secure secondary mortgage market. Section 1322(b)(2)'s prohibition against any modification of home mortgage liens supports both mechanisms. Indeed, allowing modifications of home mortgages would seriously undermine the systems Congress has so effectively created.

A. The Section 1322(b)(2) Prohibition Against Modifying Home Mortgages is Consistent with Congress' Support for Home Mortgages via Mortgage Guarantees.

As early as 1934, when Congress passed the National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934), establishing the Federal Housing Administration ("FHA"), Congress sought to make more home loans available by insuring home mortgages made by private lenders. During World War II, Congress again sought to make home financing available to more Americans by

establishing the Veteran's Administration (now Department of Veterans Affairs ("VA")) and the VA Home Loan Guaranty Program.

In essence, the mortgage insurance programs provide the mortgage borrower and lender with a substitute for the borrower's equity. If the borrower is not able to pay, the mortgage insurance program covers the lender's loss. The existence of these mortgage guaranty programs, therefore, has enabled private mortgage lenders to provide borrowers with loans requiring low down payments. Until Congress created the FHA Home Loan Mortgage Insurance Program, now operated by the Department of Housing and Urban Development, and the VA Home Loan Guaranty Program, mortgages were only available in amounts up to 75 or 80 percent of the value of the home, with the remaining balance of 20 to 25 percent being required as a down payment. With the use of the FHA and VA programs, and conventional (that is, non-governmental) mortgage insurance programs patterned after the FHA and VA programs, mortgages up to 95 percent of the home's value became common. Prospective home buyers who are unable to provide a 20 or 25 percent down payment may now become homeowners.

The success of these government programs is demonstrated by their growth. In 1992, FHA insured $48.3 Billion in mortgages, and by the end of 1992 there was $321.9 Billion in FHA-insured mortgages outstanding.[6] In 1992, the VA guaranteed $25.2 Billion in mortgages from

---

[6] All data set forth in this brief is from information compiled by the Economics Department of the MBAA.

private lenders, and by the end of 1992 there was $159.6 Billion in outstanding VA guaranteed loans.

Each of the FHA and VA programs, however, share a common characteristic – they require the lender to liquidate the mortgage before the government will pay a claim for loss. VA Office of General Counsel Precedent 1-91, 56 Fed. Reg. 25,156 (June 3, 1991). This characteristic was present when section 1322(b)(2) was enacted and is present today.[7] If the Court allows modification to reduce the amount of the protection available to home mortgages, then the government will guarantee payment only to the extent of the *reduced* balance resulting from the modification. VA General Counsel Precedent 1-91.

Because modification will affect the government's guaranty at the expense of lenders, lenders must and will respond rationally to protect themselves from being undersecured. The most effective form of such protection will be to increase the down payments required to obtain home loans, especially in geographic areas of economic uncertainty. The result will be to frustrate the policy of and incentives included in Congress' home loan guaranty programs – to make home loans available to more Americans. If, however, section 1322(b)(2) is interpreted as the Fifth Circuit interpreted it, and as suggested by respondent and *amicus*, then Congress' policies and programs to foster housing will remain effective.

---

[7] Testimony of Hon. Frank Keating, U.S. Department of Housing and Urban Development, June 6, 1991, at 4. A copy of Mr. Keating's testimony was filed with *amicus'* Fifth Circuit brief.

B. Section 1322(b)(2)'s Prohibition Against Modifying Home Mortgages is Consistent with Congress' Support for Home Mortgages via the Secondary Mortgage Market.

The secondary market for home mortgages also will be impaired if Chapter 13 modification of home mortgages is allowed in the manner advanced by petitioners. In the secondary market, mortgages are sold by mortgage bankers and other mortgage originators[8] into the nationwide (indeed, worldwide) capital markets to permanent investors. A significant aspect of the secondary mortgage market is the mortgage-backed security, which is based on pools of mortgages.

Congress, through several pieces of legislation, has fostered the growth of the secondary market. For example, in the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476 (1968), Congress authorized the new Government National Mortgage Association ("GNMA") to "guarantee the timely payment of principal and interest on such trust certificates or other securities as shall (i) be issued by . . . any . . . issuer approved . . . by the Association, and (ii) based on and backed by a trust or pool composed of mortgages. . . ." 12 U.S.C. § 1721(g)(1). GNMA's guaranteed mortgage-backed securities program began operating in 1970, and through mid-1992 GNMA had guaranteed over $423 Billion in securities based on and backed by pools of mortgages. The Federal National Mortgage Association

---

[8] Mortgage originators bring the mortgage into existence after negotiating, arranging, and facilitating the making of a mortgage loan.

("FNMA" or "Fannie Mae") began issuing mortgage-backed securities in 1981. Through mid-1992, FNMA had issued over $413 Billion in securities based on and backed by mortgage pools. These mortgage-backed securities complemented the $98 Billion in mortgages held by FNMA in portfolio in 1992.

In 1970, Congress passed the Emergency Home Finance Act of 1970, Pub. L. No. 91-351, 84 Stat. 450 (1970), Title III of which created FHLMC (also known as "Freddie Mac"). Congress gave FHLMC authority to issue participation certificates based on and backed by pools of mortgages, and FHLMC began its Participation Certificate program in 1971. Through mid-1992, FHLMC had issued over $382 Billion in participation certificates based on and backed by mortgage pools. FHLMC held $28.6 Billion in mortgages in portfolio in 1992.

To facilitate the trading of mortgage-backed securities in the capital markets, Congress passed the Secondary Mortgage Markets Enhancement Act of 1984, Pub. L. No. 98-440, 98 Stat. 1689 (1984), which added an exemption to the restrictions on credit extension by securities dealers for a "mortgage related security." The Act defines a mortgage related security as including a security that "represents ownership of one or more promissory notes or certificates of interest or participation in such notes . . . which notes . . . are directly secured by a first lien on a single parcel of real estate . . . or on a residential manufactured home." 15 U.S.C. § 78c(a)(41).

In order to provide more flexibility in the issuance of mortgage-backed securities, Congress created the Real Estate Mortgage Conduit ("REMIC") in Section 671 of the

Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986). With regard to REMICs, the Act defines a "qualified mortgage" as "any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property. . . . " I.R.C. § 860G(a)(3)(A).

As in 1978 (when section 1322(b)(2) was enacted), today the home mortgage credit market relies heavily on the secondary market for mortgages. The size and importance of this efficient market is immense. In 1978, when the Bankruptcy Code was enacted, $742.8 Billion in home mortgages were outstanding. Of these mortgages, $65.4 Billion (8.8 percent) were in mortgage pools. In mid-1992, $2.9 Trillion in home mortgages were outstanding, of which $1.3 Trillion (44.8 percent) were in mortgage pools.

The secondary mortgage market and mortgage-backed securities have important benefits to prospective American homeowners. First, the secondary mortgage market enables economies of scale that, in turn, allow lenders to offer mortgages at rates and on terms that are comparable to those otherwise available only to large corporations. These attractive rates would not be available to individuals if the efficiency of the home finance credit markets were not present. Second, because of mortgage-backed securities encouraged by congressional legislation, mortgage bankers, and other mortgage originators, can access the investment capital market in dollar volumes far above the volumes that the capital of the mortgage banker ordinarily would support. The result of this increased access is that many more mortgage originators are available to make loans to individuals seeking to buy a home.

The secondary mortgage market and mortgage-backed securities will continue to offer advantages to the individual home buyer, however, only if a predictable flow of principal and interest from mortgages can be maintained. Only such a predictable flow can ensure securities issuers that they will meet their obligations to their investors – to provide both interest and principal on their investors' securities in full and in a timely manner, regardless of the performance of individual mortgages. Interpreting section 1322(b)(2) to prohibit any modification of home mortgages is a crucial aspect in ensuring the predictable flow of principal and interest from home mortgages. This is the only interpretation consistent with Congress' years of legislation tailored to foster mortgage-backed securities. If modification were allowed, then a significant element of uncertainty would be introduced into the mortgage credit market and the mortgage-backed security market would be considerably weakened.

CONCLUSION

Congress has enacted a pervasive and important legislative program to foster home mortgages and home ownership in America. Congress recognized the potential harmful impact on this program if modifications of home loans were allowed, and it provided special protection for home mortgages in the Bankruptcy Code. The only interpretation of Bankruptcy Code section 1322(b)(2) consistent with this congressional policy is the broad and full protection accorded by the court below – that a Chapter 13 debtor may not modify home mortgages by bifurcating those mortgages into secured and unsecured parts. For

the foregoing reasons, therefore, the Court should affirm the decision of the Court of Appeals for the Fifth Circuit.

Dated: February 22, 1993

Respectfully submitted,

WILLIAM E. CUMBERLAND
General Counsel
MORTGAGE BANKERS
ASSOCIATION OF AMERICA
1125 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 861-6516

Counsel of Record for
Amicus Curiae Mortgage
Bankers Association of
America

ROGER M. WHELAN
VINCENT J. COLATRIANO
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Of Counsel